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July 9, 1997

BY OVERNIGHT MAIL

Mr. William F. Caton
Office of the Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: Access Charge Reform, CC Docket No. 96-262

Dear Mr. Caton:

Enclosed for filing please find an original plus eleven copies of Frontier Corporation's Petition for Reconsideration in the above-docketed proceeding.

To acknowledge receipt, please affix an appropriate notation to the copy of this letter provided herewith for that purpose and return same to the undersigned in the enclosed, self-addressed envelope.

Very truly yours,

Michael J. Shortley, III

Michael J. Shortley, III

cc: International Transcription Service

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Access Charge Reform)	CC Dkt. 96-262
)	
Price Cap Performance Review for Local Exchange Carriers)	CC Dkt. 94-1 JUL 12 1997
)	
Transport Rate Structure and Pricing)	CC Dkt. 91-213
)	
End User Common Line Charges)	CC Dkt. 95-72
)	

PETITION FOR RECONSIDERATION

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July 9, 1997

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Summary

Frontier submits this petition for reconsideration of limited aspects of the Commission's First Report in this proceeding. Frontier respectfully requests that the Commission reconsider those aspects of its First Report that require ILECs to eliminate, effective July 1, 1998, the unitary pricing option for tandem-switched transport, and to reallocate to the tandem switching revenue requirement many of the costs currently recovered through TIC over a three-year period commencing January 1, 1998.

The Commission's decision in both regards ignores substantial record evidence and numerous prior Commission decisions. The decision also fails to achieve the goals that the Commission has articulated.

Eliminating the unitary pricing option would achieve none of the Commission's objectives. It would not facilitate more cost-based pricing. The Commission assumes -- quite incorrectly and in the face of substantial record evidence to the contrary -- that dedicated transport utilizes *facilities* that are dedicated to one interexchange carrier. This conclusion ignores the shared-use nature of the ILECs' networks. As a result, the Commission's First Report does not encourage more efficient pricing. Rather, it confers an unwarranted competitive advantage upon AT&T, an advantage that is the vestige of AT&T's historical dominance.

Second, reallocating costs from the TIC to the tandem-switching rate element is arbitrary. The Commission has repeatedly recognized that the TIC

does not recover "costs," but rather, constitutes a subsidy. The Commission has, correctly, proposed targeting price cap index reductions occasioned by the price cap formula to the TIC in order to eliminate this subsidy over time. However, exporting to tandem-switched transport users "costs" that not only they do not cause to be incurred, but that do not exist in any economically meaningful sense, simply does not make any sense.

**Before the
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JUL 21 1997
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Access Charge Reform)	CC Dkt. 96-262
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for Local Exchange Carriers)	
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Transport Rate Structure)	CC Dkt. 91-213
and Pricing)	
)	
End User Common Line)	CC Dkt. 95-72
Charges)	

PETITION FOR RECONSIDERATION

Introduction

Frontier Corporation ("Frontier") submits this petition for reconsideration of limited aspects of the Commission's First Report in this proceeding.¹ Frontier respectfully requests that the Commission reconsider those aspects of its First Report that require incumbent local exchange carriers ("ILECs") to eliminate, effective July 1, 1998, the unitary pricing option for tandem-switched transport,² and to reallocate to the tandem switching revenue requirement many of the costs currently recovered through the transport interconnection charge ("TIC") over a three-year period commencing January 1, 1998.³

¹ *Access Charge Reform*, CC Dkt. 96-262, First Report and Order, FCC 97-158 (May 16, 1997) ("First Report"). The First Report was published in the Federal Register on June 11, 1997. 62 Fed. Reg. 31868 (June 11, 1997).

² *Id.*, ¶ 168.

³ *Id.*, ¶ 167.

The Commission's decision in both regards ignores substantial record evidence and numerous prior Commission decisions. The decision also fails to achieve the goals that the Commission has articulated.⁴

Eliminating the unitary pricing option would achieve none of the Commission's objectives. It would not facilitate more cost-based pricing. The Commission assumes -- quite incorrectly and in the face of substantial record evidence to the contrary -- that dedicated transport utilizes *facilities* that are dedicated to one interexchange carrier.⁵ This conclusion ignores the shared-use nature of the ILECs' networks. As a result, the Commission's First Report does not encourage more efficient pricing. Rather, it confers an unwarranted competitive advantage upon AT&T, an advantage that is the vestige of AT&T's historical dominance.

Second, reallocating costs from the TIC to the tandem-switching rate element is arbitrary. The Commission has repeatedly recognized that the TIC does not recover "costs," but rather, constitutes a subsidy. The Commission has, correctly, proposed targeting price cap index reductions occasioned by the price cap formula to the TIC in order to eliminate this subsidy over time. However, exporting to tandem-switched transport users "costs" that not only they

⁴ The Commission's oft-stated goals are: (1) to encourage efficient use of transport facilities by allowing pricing that reflects the way costs are incurred; (2) to avoid interference with the development of interstate access competition; and (3) to facilitate full and fair interexchange competition. See, e.g., *Transport Rate Structure and Pricing*, CC Dkt. 91-213, Report and Order and Further Notice of Proposed Rulemaking, 7 FCC Rcd. 7006, 7009, ¶ 5 (1992) ("Transport First Report").

⁵ First Report, ¶ 180.

do not cause to be incurred, but that do not exist in any economically meaningful sense, simply does not make any sense.⁶

Argument

I. THE COMMISSION SHOULD RETAIN THE UNITARY RATE STRUCTURE.

The Commission grounds its decision to eliminate the unitary rate structure on its belief that it does not accurately reflect the way ILECs incur the costs of providing local transport services.⁷ The Commission's further conclusions that the unitary rate structure distorts both access⁸ and interexchange⁹ competition are dependent upon its conclusions that the unitary rate structure is not cost-causative.

The Commission's conclusions are incorrect. The Commission asserts that -- for the dedicated component of tandem-switched transport -- *facilities* are dedicated to the use of a single interexchange carrier. The Commission, however, acknowledges that its hierarchical view of the ILECs' networks is outdated.¹⁰ Despite this conclusion, the Commission attempts to justify its decision to eliminate the unitary rate structure as follows:

⁶ Nothing in *Comptel v. FCC*, 87 F.3d 522 (D.C. Cir. 1996), requires the Commission to adopt this proposal. In *Comptel*, the D.C. Circuit vacated portions of the Commission's interim transport rate structure. However, the D.C. Circuit did not compel the Commission to adopt any particular set of alternatives. It merely required the Commission rationally to examine the alternatives available to it and properly to justify any future decisions that it reaches. The Court plainly did not give the Commission *carte blanche* to reach different conclusions that are equally arbitrary, capricious or not supported by substantial record evidence.

⁷ First Report, ¶ 178.

⁸ *Id.*, ¶ 179.

⁹ *Id.*, ¶ 180.

¹⁰ *Id.*, ¶ 188.

We conclude, however, that the differences WorldCom identifies do not support retention of the unitary rate structure because, even in a ring-based network, the three-part rate structure treats direct-trunked and tandem-switched transport consistently. *In a fiber-optic or ring-based network, dedicated, direct-trunked transport circuits are given a constant and exclusive time slot assignment on a large time-divisioned multiplexed fiber-optic cable.* The incumbent LEC routes traffic for the IXC purchasing the direct trunk onto the dedicated circuit or the time slot, where it is received elsewhere on the ring or in the network at the serving wire center. The direction or precise routing of the signal around the ring is irrelevant for purposes of the rate structure because the transport is priced on an airline-mileage basis between the two end points. *Capacity dedicated to a particular IXC, however, is not available to the LEC for other purposes.*¹¹

The Commission's logic fails. The very same conditions the Commission identifies are equally true for common transport users as they are for dedicated transport users. A common transport user's traffic on a synchronous optical network ring is also given an exclusive time slot. While that capacity is being utilized by one IXC -- whether a dedicated or common transport user -- it is unavailable for use by the ILEC for any other purpose.¹²

In addition, the Commission *does not* treat the two consistently. Although the end points of the traffic -- end office and serving wire center -- are the same, the two types of transport users are assessed different charges. Direct-trunked transport users pay a single, flat-rated charge for the transport of their traffic. In

¹¹ *Id.* (emphasis added).

¹² This contrasts sharply with entrance facilities which -- because the traffic carried over those facilities is directed only to one interexchange carrier's point-of-presence -- are truly non-traffic sensitive in nature.

contrast, common transport users pay two discrete charges -- a flat-rated and a usage-sensitive charge for transport between the same two end points.

Indeed, given the ILECs' evolving transport and related signaling network architecture, it would have been more reasonable for the Commission to conclude that transport services -- except entrance facilities -- are more traffic sensitive than non-traffic sensitive in nature.¹³

Moreover, the Commission has consistently held that the three-part rate structure it adopted in the First Report would require tandem-switched transport users to pay for costs over which they have no control. As the Commission explained to the D.C. Circuit:

Inasmuch as the record does not show that users of tandem-switched or direct-trunked transport can exercise effective control over the routing between the end office and the serving wire center and does not contradict possible assertions that the same routing is frequently used for both forms of transport, the Commission was justified in concluding that it might be unfair to base direct-trunked transport on airline mileage and tandem-switched rates on actual mileage.¹⁴

In its First Report, the Commission failed to acknowledge -- must less distinguish -- its prior reasoning. Thus, the Commission's decision in this regard fails to satisfy its own goal of more cost-based pricing and also fails to explain

¹³ This is not to say that the Commission should mandate the old equal charge per unit of traffic delivered rule. It does suggest, however, that the Commission has no basis -- in terms of its stated rationale of cost-causation -- for eliminating the unitary rate structure option.

¹⁴ *Comptel v. FCC*, No. 95-1168, Brief for Federal Communications Commission at 34 (Dec. 14, 1995) ("FCC Br.").

the Commission's departure from its prior reasoning. Both failures are hallmarks of arbitrary and capricious agency action.¹⁵

Not only does the Commission's decision fail to achieve its first objective, it fails the test of achieving its second and third objectives as well. The Commission bases its conclusion that the unitary rate structure inhibits access competition on the proposition that "we have not corrected the non-cost based aspects of our tandem-switched transport rate structure...."¹⁶ As Frontier has demonstrated, that premise is simply untrue. Thus, regardless of the claims of several access competitors "that the present unitary rate structure inhibits the development of competition in this area,"¹⁷ the current unitary rate structure, in fact, does no such thing.¹⁸ Thus, for the Commission to give credence to that claim would effectively provide a preferred advantage to one class of competitors over another. The Commission itself has recognized that this would be improper.¹⁹

In contrast to the minimal effects that the unitary rate structure has had on the competitiveness of the access market, its elimination would have devastating

¹⁵ See, e.g., *Motor Vehicle Mfrs. Ass'n v. State Farm Mutual Auto Ins. Co.*, 463 U.S. 29, 43 (1983); *Comptel*, 87 F.3d at 536.

¹⁶ First Report, ¶ 179.

¹⁷ *Id.*

¹⁸ The irony of the Commission's reasoning is that it would permit competitive access providers – but not ILECs – to offer end-to-end transport options to tandem-switched transport users, a point previously pointed out to the Commission. See *Comptel v. FCC*, No. 95-1168, Final Joint Brief of Interexchange Intervenors Supporting Respondent Federal Communications Commission in No. 95-1170 at 15-16 (Dec. 29, 1995).

¹⁹ First Report, ¶ 180.

effects on interexchange competition. In this respect, the Commission justifies its decision to eliminate the unitary rate structure on the grounds that it has found AT&T to be non-dominant in the provision of most interexchange services.²⁰ Whatever the merits of that decision, it is utterly irrelevant in this context. The Commission's reasoning ignores the fact that only AT&T -- and possibly MCI and Sprint -- are able to take advantage of dedicated transport services. That is unrelated to whether AT&T currently meets the Commission's criteria for "dominance."

The "impact estimates" previously discussed by the Commission showed that even under the interim transport rate structure -- which retained the unitary pricing option -- smaller interexchange carriers would face an incremental cost disadvantage for transport services of 2.4% compared to AT&T.²¹ That disadvantage is significant enough. Abandoning the unitary rate structure would markedly exacerbate that differential. For the dedicated link, it would require smaller interexchange carriers, such as Frontier, to purchase dedicated services -- largely at the DS-0 (voice grade) level -- while AT&T could provision a far larger proportion of its traffic over DS-3 circuits. The relative price difference between a DS-0 circuit and a DS-0 channel on a DS-3 circuit is substantial.²² In

²⁰ *Id.* See *Motion of AT&T To Be Reclassified as a Non-Dominant Carrier*, 11 FCC Rcd. 3271 (1995)

²¹ Transport First Report, 7 FCC Rcd. at 7041, ¶ 67.

²² *Comptel v. FCC*, No. 95-1168, Final Brief of Petitioner Competitive Telecommunications Association at 12 (Feb. 2, 1996) ("Comptel Br.").

a highly competitive market, such cost differences, obviously, have significant competitive consequences.

Conferring such an advantage upon AT&T makes no economic or policy sense. Frontier has no argument with the Commission's basic premise that it should not artificially favor one competitor over another. Yet, what the Commission proposes accomplishes precisely that result. Because the Commission's decision does not advance any accepted principles of cost-causation, its decision to confer an unwarranted competitive advantage upon AT&T is entirely unjustified.

**II. THE COMMISSION SHOULD DECLINE TO
REALLOCATE COSTS FROM THE
TRANSPORT INTERCONNECTION CHARGE
TO THE TANDEM SWITCHING RATE
ELEMENT.**

In its interim transport orders, the Commission not only established the dedicated/common transport dichotomy, it calibrated the prices for dedicated transport to the then-existing rates for functionally equivalent special access services.²³ The D.C. Circuit did not disturb this portion of the Commission's decision.

As a result of this repricing, approximately 72% of the ILECs' former local transport revenue requirement would have potentially gone unrecovered.²⁴ To ameliorate this concern, the Commission: (a) established the TIC; and (b) allocated 20% of the unaccounted-for revenue requirement to the tandem

²³ Transport First Report, 7 FCC Rcd. at 7028-29, ¶¶ 43-44.

²⁴ See Comptel Br. at 18.

switching charge and 80% to the TIC, which was assessed on all users of local switching.²⁵ The Court remanded the Commission's distribution of the residual on the grounds that the Commission failed to justify the allocation.²⁶

In its First Report, the Commission addressed the Court's remand in two ways. First, it directed that price cap index reductions resulting from the operation of the price cap formula first be targeted to reduce the TIC.²⁷ Second, the Commission ordered that the remaining portion of the TIC be allocated to the tandem switching rate element over a three-year period commencing January 1, 1998.²⁸ The first portion of this aspect of the Commission's decision was correct; the second portion was wrong and should be reconsidered.

The Commission justified the latter portion of its decision as follows:

Based on the record in this proceeding, we reallocate much of the remaining 80% of the tandem switch revenue requirement back to the tandem switching rate element in three steps. *We conclude that this action is most consistent with cost-causation, and with the general approach we are taking in this Order regarding pricing issues.*²⁹

²⁵ Transport First Report, 7 FCC Rcd. at 7009-10, ¶ 6.

²⁶ *Comptel*, 87 F.3d at 529-32.

²⁷ First Report, ¶ 236.

²⁸ *Id.*, ¶ 167.

The Commission also made other -- somewhat technical -- changes in the rate element structure and calculations for recovering that portion of the TIC reallocated back to the tandem switching rate element. *Id.*, ¶¶ 170-74.

²⁹ *Id.*, ¶ 196 (emphasis added).

The Commission apparently believes that the D.C. Circuit required this reallocation in order "to implement a cost-based tandem switching rate." *Id.*, ¶ 195.

With all due respect, the Commission's analysis is incorrect. *First*, the residual -- after the restructure and repricing of local transport -- *does not* represent a *tandem switching* revenue requirement. The Commission has previously recognized this very point. In its First Reconsideration Order, the Commission acknowledged that its "Part 36 separations and Part 69 access charge rules incorporate fully distributed costing approaches. Part 69 and other Commission rules do not explicitly define a methodology for a tandem revenue requirement...."³⁰ Although the Commission concluded that it could create one,³¹ its methodology is simply a residual calculation which assigns costs uncovered by the facility elements to the tandem revenue requirement.

Thus, the tandem revenue requirement represents the potentially unrecovered transport basket revenues as a whole. That is, this residual is a basket -- not a rate element or service category -- shortfall. Thus, the Commission's unexplained assertion that the residual is attributable to a tandem switching revenue is simply incorrect.

Second, the Commission's characterization of its decision as "most consistent with cost-causation"³² is -- for the same reasons -- equally incorrect. In previously allocating 80% of the residual to the TIC, the Commission concluded that it *could not* identify common transport users as the cost-causers of the residual. As the Commission explained to the D.C. Circuit:

³⁰ *Transport Rate Structure and Pricing*, CC Dkt. 91-213, First Memorandum Opinion and Order on Reconsideration, 8 FCC Rcd. 5370, 5378, ¶ 45 (1993).

³¹ *Id.*

³² First Report, ¶ 195.

The AT&T Brief may be implying that the entire difference between a transport revenue requirement produced by the interaction of the current rules and the revenues exchange carriers recover from the new tandem transmission charges is attributable to tandem switching. *The Commission most certainly did not find that this is the case and record in this proceeding could not support such a conclusion. The remaining transport revenue requirement is too large to reflect any reasonable estimate of tandem switching costs.*

* * * *

*The agency did not find that 100 percent of such a revenue requirement would be an appropriate cost-based tandem switching charge.*³³

The D.C. Circuit did not conclude that the Commission was incorrect in this conclusion; it merely concluded that the Commission had failed to justify its 20/80 allocation.³⁴ The D.C. Circuit's decision can no more justify a 100/0 allocation -- "justified" by a mere ten words³⁵ -- than it justified the Commission's prior decision, which it remanded. This is particularly true where there is substantial evidence that would suggest that -- in any economically meaningful sense -- even the 20% of the residual that the Commission allocated to the

³³ FCC Br. at 25 (emphasis added).

³⁴ *Comptel*, 87 F.3d at 529-32.

³⁵ The D.C. Circuit recently chided the Commission for casting aside substantial record evidence that its default payphone compensation rate was too high with the pabulum "We disagree." See *Illinois Public Telecommunications Ass'n v. FCC*, No. 96-1394, slip op. at 15 (D.C. Cir. July 1, 1997) ("The FCC's *ipse dixit* conclusion, coupled with its failure to respond to contrary arguments resting on solid data, epitomizes arbitrary and capricious decisionmaking.").

In the same vein, the Commission may not ignore substantial record evidence and its own prior conclusion that even the 20 percent of the residual that it originally assigned to the tandem switching element was too high (see *infra* at 12) through the incantation "We conclude that this action is most consistent with cost-causation...." The Commission might as well just have said "We disagree."

tandem switching rate elements *over-allocates* costs attributable to common transport users.

As Comptel explained to the D.C. Circuit:

... the BellSouth data show that even 20% of the inflated TST-S [tandem switching] revenue requirement is far in excess of direct costs and reflects a discriminatory loading of overheads onto TST-S users. If the TST-S rate had been designed to impose 100% of the TST-S revenue requirement upon TST users, the result would have been to load astronomically disproportionate overheads onto the backs of smaller IXCs who depend upon TST routing.³⁶

The Court remanded the Commission's interim transport decisions in part on this ground.³⁷ Even though the Commission previously agreed that this result would be inappropriate, its First Report achieves precisely this result. As was true in the interim transport proceeding, the record compiled in this proceeding cannot support the conclusion that even 20 percent -- much less 100 percent -- of the residual is properly attributable to tandem switching.³⁸ The most that can be said is that the Commission again failed properly to identify and allocate those costs.

In short, the Commission's decision to allocate most of the remaining residual to common transport users neither advances the Commission's stated rationale for its decision nor is consistent with the D.C. Circuit's remand.

³⁶ Comptel Br. at 24.

As noted *supra* at 11, even the Commission previously agreed with this characterization.

³⁷ *Comptel*, 87 F.3d at 532-33.


³⁸ *E.g.*, First Report, App. B, ¶¶ 86-87.

At the end of the day, the Commission may reasonably inquire, "What should be done?" The Commission's First Report itself suggests the answer. It ordered ILECs to target price cap reductions first to the TIC in order to eliminate this subsidy.³⁹ By taking this step, the Commission has appropriately responded to the D.C. Circuit's remand. By taking the next step and allocating essentially unallocatable costs to the tandem switching rate element, the Commission has run afoul of the remand. The Commission should, therefore, retain the 20/80 allocation and let the targeted price cap reductions alone remove the TIC from rates paid by interstate access customers.

Conclusion

For the foregoing reasons, the Commission should reconsider those aspects of its First Report as suggested by Frontier herein.

Respectfully submitted,


Michael J. Shortley, III

Attorney for Frontier
Corporation

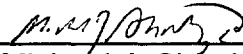
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July 9, 1997

³⁹ *Id.*, ¶ 236.

Certificate of Service

I hereby certify that, on this 9th day of July, 1997, copies of the foregoing Petition for Reconsideration were served by first-class mail, postage prepaid, upon the parties on the attached service list.



Michael J. Shortley, III

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